J. E. Steigerwald Co., Inc. *and* **International Association of Machinists and Aerospace Workers, AFL-CIO.** Cases 15-CA-7741 and 15-CA-7752

August 17, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On July 8, 1981, Administrative Law Judge Philip P. McLeod issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel refiled with the Board his brief to the Administrative Law Judge.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, J. E. Steigerwald Co., Inc., Pascagoula, Mississippi, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

PHILIP P. MCLEOD, Administrative Law Judge: Upon charges filed on June 11 and July 9, 1980,[1] by International Association of Machinists and Aerospace Workers, AFL-CIO (herein called the Union) against J. E. Steigerwald Co., Inc. (herein called Respondent), the General Counsel of the National Labor Relations Board, by the Regional Director for Region 15, issued a complaint dated July 15, 1980, alleging violations by Respondent of Section 8(a)(1), (3), and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended, herein called the Act. Respondent, by its answer, denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held before me in Pascagoula, Mississippi, on January 14 and 15 and February 3 and 4, 1981, at which the General Counsel and Respondent were represented by counsel and all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Thereafter, the General Counsel and Respondent filed briefs which have been duly considered.

Upon the entire record in this case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Maryland corporation, is engaged in the business of installing marine decking on ships. Respondent operates in several States and is currently performing subcontracting work for Ingalls Shipbuilding Corporation (herein called Ingalls) in Pascagoula, Mississippi. During the past 12 months, a representative period, Respondent, in the course and conduct of its business activities, purchased and received goods and materials valued in excess of $50,000 which were shipped directly to it from points located outside the State of Mississippi. Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Allegations and Issues*

Counsel for the General Counsel, by the complaint, alleges, *inter alia*, that on May 28 striking employees John Clark, Noble Mann, Joseph Cooper, Edward Graves, Alexis Joseph Tardy, George Lee, and Kenneth Sellers (herein individually called Clark, Mann, Cooper, Graves, Tardy, Lee, and Sellers) made unconditional offers to return to their former positions of employment but were denied reinstatement by Respondent in violation of Section 8(a)(1) and (3) of the Act. The complaint further alleges the discriminatory termination of employees Dwight Nelson and J. Keith Broadus (herein called Nelson and Broadus respectively) on June 6 because of their activities in support of the Union and seeks a bargaining order based upon the Union's status as the majority representative of Respondent's unit employees which status was unlawfully dissipated by Respondent's discharge and refusal to reinstate the above-named employees, thereby precluding the holding of a fair election and violating Section 8(a)(1) and (5) of the Act.

The complaint does not specifically allege the discharge or termination of the seven strikers named above. At the hearing, counsel for the General Counsel advised the court and Respondent that he was taking the position that these individuals were terminated for having en-

[1] All dates refer to 1980 unless otherwise indicated.

gaged in the strike discussed herein. Further, at the hearing, counsel for the General Counsel amended the complaint by alleging additional discriminatory discharges of Sellers on August 15 following his recall and of Broadus on August 21 following his reinstatement; the discriminatory recall of Tardy on September 8 to the position of laborer rather than his previous position as an apprentice tile mechanic; and the commission of certain independent 8(a)(1) conduct by Supervisors Wayne Stinson and Joe Dragunas involving the issuance of oral warnings and threats of discharge to employees because of their union activities. Each of these contentions was fully litigated at the hearing, was addressed by both the General Counsel and Respondent in their post-hearing briefs, and is therefore fully considered herein.

In its answer and during the hearing, Respondent admitted the appropriateness of the unit as alleged in the complaint;[2] the supervisory status of certain people discussed below; and its refusal to reinstate the strikers on May 28 because, Respondent contends, they were permanently replaced in a lawful manner. Respondent also admitted recalling Broadus and Nelson on July 24 and Sellers on July 31, and thereafter laying off Sellers on August 15 and discharging Broadus on August 21, but denied the commission of any unfair labor practices.

B. *Respondent's Supervisory Structure*

It will be helpful to a fuller understanding of various events detailed below to explain Respondent's managerial/supervisory hierarchy at its Pascagoula operation. Ultimate responsibility for that operation lies with Malcolm E. Steigerwald (herein called Steigerwald), executive vice president of Respondent, whose office and daily workplace is at Respondent's corporate headquarters in Baltimore, Maryland. J. E. Steigerwald, for whom Respondent is apparently named and senior in corporate authority to Steigerwald, appears to have little or nothing to do with the day-to-day operations in Pascagoula, for his name is mentioned only rarely in this proceeding. Joseph J. Dragunas (herein called Dragunas) is a senior marine superintendent with Respondent at its Baltimore facility. Dragunas has assisted Steigerwald in overseeing production, labor relations, and other day-to-day matters relating to the Pascagoula operation. Herbert W. Stinson (herein called Stinson), also classified as a marine superintendent, is the person of highest authority permanently stationed at the Pascagoula operation.[3] Below Stinson are a number of work-leadermen, including Henry Colley, who act as firstline supervisors.

C. *The Card Majority and Demand for Recognition*

On May 14, 1980, several employees of Respondent, including Lee, Graves, Mann, and Clark, met with Russell R. Kelley, a business agent of the Union, who gave these employees union authorization cards to be signed by them and their fellow employees.[4] Lee, Graves, Mann, and Clark each filled out, signed, and dated authorization cards in Kelley's presence. On May 15, employees Broadus, Cooper, John Michon, Kenneth Broadus, Austin Nowell, Albert Wright, Mike Everhart, and William Holland signed identical cards. On May 16, employees Sellers and Kenny Wilks signed cards. Employee Tardy signed a card on May 18. Employee Nelson, whose card is undated, testified he signed the card approximately May 15 or about 1 week before the strike. Thus by May 20, 16 out of 23, i.e., a majority of Respondent's employees in the unit stipulated to be appropriate, had signed authorization cards.

On May 19, the Union sent a certified letter to Respondent claiming majority status and requesting recognition. On May 21, Kelley followed up the letter with a telephone call to Steigerwald. Steigerwald refused to recognize the Union and suggested Kelley file a petition with the Board. By letter dated May 28, Respondent's attorney reaffirmed Respondent's position to decline recognition until such time as the Union may be certified by the Board.

D. *The Strike and Replacement of Strikers*

The threat of a strike was made known to Ingalls and Respondent about May 22. At that time, Ingalls established a "separate gate" for the exclusive use of Steigerwald employees on the east bank of the shipyard. On May 26, Ingalls established a "separate gate" for the exclusive use of Steigerwald employees on the west bank of the shipyard. On both the east and west banks, Ingalls also had various other "gates" for use by employees of Ingalls and other subcontractors. Some of these other "gates" were staffed by security guards whereas others were mere openings in a fence which were neither manned nor marked as exclusively for the use of employees of Ingalls or subcontractors besides Respondent. These "gates" remained in use, in the condition described, through the time of the hearing herein.

On May 26, while on an informal break aboard a ship, employee Sellers complained to other employees about Respondent not paying him the wage rate paid to other

[2] The unit as set forth in the complaint reads as follows:

> All production and maintenance employees employed by Respondent at its Pascagoula, Mississippi, operations, including laborers, trowel mechanics, tile mechanics, terrazzo grinders; excluding all office clerical employees, professional employees, guards, watchmen and supervisors as defined in the Act.

Counsel for the General Counsel and Respondent stipulated that the appropriate unit consisted of 23 unit employees of which 21 employees were properly classified as follows: (tile mechanics) Broadus, Kenny Broadus, Wayne Hartness, William Holland, Dwight Nelson, Austin R. Nowell; (trowell mechanics) Clark, Cooper, Mann, Henry Colley, Wayne Michael Davis; (terrazzo grinders) Jimmy Wilson, Kenneth Wilks; (laborers) Graves, Lee, John Michon, James Dumas, Mike L. Everhart, Darryl Pugh, Al Wright; and (quality assurance) Charles W. Wilson. The parties also stipulated that Sellers and Tardy were in the unit but disagreed as to their classification. Counsel for the General Counsel contends that Sellers was a first class terrazzo grinder and Tardy was a tile mechanic. Respondent agreed that Sellers was a terrazzo grinder but contended that he was a second class grinder and that Tardy was only a laborer.

[3] Respondent admits, and I find, that Steigerwald, Dragunas, and Stinson are supervisors within the meaning of the Act.

[4] The authorization cards read in pertinent part as follows:

> I, the undersigned employee of [J. E. Steigerwald Co., Inc.,] authorize the International Association of Machinists and Aerospace Workers (IAM) to act as my collective bargaining agent for wages, hours and working conditions. I agree that this card may be used either to support a demand for recognition or an NLRB election, at the discretion of the Union.

terrazzo grinders. While employees were participating in this conversation, Marine Superintendent Stinson walked into the area and asked what the problem was. Sellers responded that he had not been paid the proper wage rate, whereupon Stinson directed all present to report to Respondent's offices to attempt to iron out the problems. The employees met with Stinson and Dragunas, who had gone to Pascagoula upon hearing of the potential strike situation. Employees voiced various complaints concerning rates of pay, vacation, and holiday benefits. During this meeting, Stinson accused Sellers of holding a union meeting aboard the ship. Dragunas stated that he would attempt to take care of the problem regarding pay but would not grant the requested holidays and vacation pay because it was not in accord with Respondent's practice at its corporate headquarters in Baltimore.

On the evening of May 26 Respondent's employees met and voted to strike the following morning.

On the morning of May 27, starting at approximately 5:30 a.m., the Union placed pickets at various entrances to the shipyard used by employees of Respondent and Ingalls. Seven employees of Respondent picketed on May 27 at the Steigerwald "gates" on the east and west banks. These pickets were trowel mechanics Clark, Mann, and Cooper; laborers Graves and Lee; and Sellers and Tardy, whose status are in dispute and will be discussed more fully below. Certain other employees, including Keith Broadus and Dwight Nelson, honored the picket line and did not report to work, but did not themselves picket. Still other employees crossed the picket line and reported to work.

Employee Kenneth Wilks, who crossed the picket line and reported to work, testified that he was in Respondent's office shortly after 7 a.m. on the morning of the strike in order to punch in at the timeclock and go to work. In the office with Wilks were the secretary, Alice Goff, and Marine Superintendent Stinson. Wilks testified that he overheard Stinson make the statement that people wearing the picket signs would be fired. Both Goff and Stinson were called as witnesses by Respondent, but neither was asked about this incident, and Wilks' testimony is uncontradicted.

Respondent denies that it fired those seven employees who picketed on May 27. It admits, however, that during the day on May 27 Steigerwald, in consultation with both Dragunas and Stinson, made a decision specifically to replace only those seven employees who were observed carrying picket signs that day and not to replace other individuals who did not report to work.

In furtherance of this decision, on May 27 Stinson contacted Tony Pierce whose name was given to Stinson by another employee. Pierce came to Respondent's worksite on that same day and filled out an application for employment, which reflected 7 months prior work experience as a carpenter. Pierce was hired by Stinson, according to Stinson, as a laborer to replace Kenneth Sellers. Pierce began work immediately on May 27.

According to Henry Colley, a first-line supervisor, during the day on May 27, J. E. Steigerwald himself spoke to him by telephone and asked Colley if he knew anyone he could get to come to work. Colley replied he did, and Steigerwald asked Colley if he would bring them in. Colley replied yes, that he would contact the people.

During the day on May 27, it came to employee Wilks' attention, either through rumor or from Marine Superintendent Stinson, that Respondent would be hiring new people to take the place of the picketers. Wilks approached Stinson and mentioned a friend, Frank Urban, who had an application on file and who might be available for work. Stinson informed Wilks to tell Urban to be at a nearby Rebel store at 6 a.m. the following day, May 28.[5] On the evening of the 27th, Wilks spoke to Urban, and on the following morning Urban reported to the Rebel store as instructed.

According to both Union Business Agent Kelley and Joseph Hayes, director of labor relations for Ingalls, the Union removed its pickets and terminated the strike at approximately 4 p.m. on May 27. At that time, Kelley also met with Respondent's employees and told them to return to work the next morning. Kelley further testified that at approximately 4:30 p.m. he telephoned Hayes to tell him the strike had been terminated. Kelley testified he told Hayes that the picket lines were down and that the employees were going to return to work on their normal shifts the next morning. Hayes responded that he appreciated Kelley calling. On cross-examination by Respondent, Kelley clarified his earlier testimony by adding that in the conversation with Hayes he told Hayes not only that picketing had ceased but also specifically that the Steigerwald picket signs were down. Hayes, who testified after Kelley, did not deny this, and I credit Kelley. Hayes, whose testimony generally corroborates that of Kelley, testified that Kelley called and stated he had taken the pickets down and they would not be put back up in the near future. Hayes added that immediately after the conversation with Kelley, Ed Lowe, president of the local building trades council which had also picketed on May 27 in conjunction with the Union, telephoned and stated that Kelley had left Steigerwald and had pulled the pickets down. It is clear from Hayes' testimony that as a result of the telephone calls from Kelley and Lowe, Hayes clearly understood that picketing not only of Ingalls but also of Steigerwald had terminated. Hayes then notified Ingalls Personnel the pickets were down and the shipyard would be in operation the next day.

Hayes testified he then telephoned Dragunas, as Hayes put it, to find out what Kelley and Steigerwald had discussed. Hayes apparently was under the impression or belief they had met or probably had had a discussion which resulted in Kelley's decision to remove the pickets. It is not clear whether Hayes' misimpression or belief was clarified by Dragunas, but it is clear, according to Hayes' testimony, that he informed Dragunas the pickets were *already down and everybody would be back to work the next morning*. Dragunas denied Hayes' testimony, claiming Hayes informed him only that the pickets "would be coming off the Ingalls gate" and that he had

[5] Prior to the morning of the strike on May 27, employees were instructed not to report to Respondent's facility but to meet at a nearby Rebel store so that they could be transported across the picket line in company trucks. During the day on the 27th, instructions were issued to continue with this procedure the following morning.

no indication the pickets would be coming down as far as Steigerwald was concerned. In this regard I discredit Dragunas. It is both improbable and illogical to believe that Hayes would have telephoned Dragunas to tell him only that pickets were coming off the Ingalls' gates. Indeed, the very purpose of the call, according to Hayes, was to find out what Kelley and Steigerwald had discussed. Rather, I credit Hayes whose testimony is more probable and who is himself an uninterested party to this proceeding. I find that Hayes informed Dragunas the pickets were already down and that everybody, not just Ingalls' or other subconcractors' employees, would be back to work the next morning. Based on this, I find that Respondent took the actions discussed hereinafter knowing, as of 5:30 p.m., May 27, that its striking employees would return to work the following morning.

On the evening of May 27, in furtherance of the telephone conversation earlier that day with J. E. Steigerwald, Henry Colley contacted his son Mickey Colley, Robert Martin, David Stallworth, Sammie Williams, and Roy Thomas to ask them if they would be interested in coming to work for Respondent. When they stated they would, Colley told Martin and Williams to meet Colley at his house the next morning at 6 a.m. Colley testified he told Thomas to meet him at Respondent's workyard the following morning at 6 a.m. When Colley contacted Stallworth, Stallworth informed Colley he had a job to finish Thursday but that he could definitely report to work on Friday, May 29. Colley told Martin and Williams to meet him at his house the following morning in order to transport them himself to the Rebel store. No explanation was offered why Colley told Thomas to meet him at Respondent's workyard. According to Colley, his son Mickey Colley and Williams both accompanied him to the Rebel store the next morning. Martin did not show up and did not report to work at all on May 28. Colley, called by Respondent, testified very emphatically twice that Thomas also arrived at the Rebel store and rode the rest of the way to work with other employees. This testimony is contradicted by Stinson who, for reasons explained below, I credit on this point. After meetimg at the Rebel store, Urban, Williams, and Mickey Colley accompanied Stinson, Dragunas, and the other employees, including Tony Pierce, to Respondent's workyard in two company-owned trucks.

The employees went into the shipyard through the Steigerwald "gate." There were no pickets at the gate. Urban, Williams, and Mickey Colley then received temporary security badges, and the two trucks proceeded to the Steigerwald office inside the yard. As soon as they got to the office, Stinson saw the employees who had been picketing the prior day sitting outside of the office. Rather than approach these employees, Stinson took Urban, Williams, and Mickey Colley into the office, had them fill necessary forms, and issued them work assignments.[6] Stinson then went out to the striking employees and told all of them that they had been permanently replaced. When asked to explain the difference between permanent replacement and termination, Stinson refused to answer. The strikers requested that they be paid, and Stinson telephoned Steigerwald to determine whether they could receive their pay. Steigerwald and Dragunas came into the yard at approximately 9–9:30 a.m., and gave the strikers their pay, again indicating to all of them that they were permanently replaced.

According to Darryl Pugh,[7] after Marine Superintendent Stinson had been outside talking to the employees who had picketed the preceding day, Stinson came into Respondent's office where he, secretary Alice Goff, other employees, and perhaps quality assurance inspector Charles G. Wilson were present. According to Pugh, Stinson began talking about the strike; stated that he had spoken to Steigerwald by phone; and then stated that he had fired all the people that were on strike, referring to the picketers. On cross-examination, Pugh testified very specifically that Stinson did not use the word "replaced" but rather said "fired." Respondent argues that Pugh should be discredited because of personal animosity resulting from his being fired and because Pugh's assertion is contradicted by Stinson, Goff, Wilson, and fellow employee Kenneth D. Broadus. For the following reasons, however, I credit Pugh. Careful examination of the record reveals that only Stinson and Wilson contradict Pugh. Goff stated only that she could not recall such a statement.

Broadus testified that on that same morning, also while in Respondent's office, he asked Stinson why he had fired the strikers. Stinson replied, "we did not fire them. We replaced them. We have got a job and we have got to get it done, and we have to get the people to do it." Careful analysis of the record reveals that Broadus' testimony was about a different conversation from Pugh's. Broadus' testimony reveals that Respondent's office is divided into two parts, one where clerical work is performed by Alice Goff and the other which is used for storage and where the timeclock is located. Broadus' conversation with Stinson occurred in the latter part where the timeclock is located while Pugh's testimony relates to a statement made by Stinson in that portion of the building where secretary Alice Goff worked. The question of the probability of Stinson making one statement to Pugh and Goff and a much different statement to Broadus is discussed below.

As noted, Stinson and Wilson directly contradict Pugh. Both deny that Stinson made the statement attributed to him by Pugh. Neither, however, was asked to clarify what, if anything, Stinson did say. Further, there is as much reason to question Wilson's personal bias as there is Pugh's for having been fired inasmuch as Wilson received a recent promotion from Respondent to the position of marine superintendent. Thus, my credibility resolution on this issue relies on the following factors. First, it is undenied that on the morning of the strike, May 27, employee Wilks overheard Stinson make the statement that people wearing the picket signs would be fired.

[6] According to Respondent, Urban replaced laborer Edgar Graves; Williams replaced trowel mechanic John Clark; and Mickey Colley, hired as a laborer, replaced Alexis J. Tardy, whose job status is in dispute. Respondent permitted other employees, including Broadus and Nelson, who had merely honored the picket line, to return to work on May 28.

[7] Pugh was an employee at the time of the strike, but was fired for absenteeism in October 1980.

Thus, it is not implausible that Stinson would make the same statement the next day. Second, the record establishes that on the same day as Stinson's statement to Pugh, secretary Alice Goff made the following notation on the personnel files of each of the seven picketers: "5-28-80 Terminated Reason: While walking the picket line they were replaced." While Respondent argues that Goff made these entries on her own and without direction from anyone, Respondent did not ask Goff to provide any explanation why she made these entries. Her entry that the employees were "terminated" is similar to Pugh's testimony that Stinson said they were "fired." Her additional entry that they were replaced is similar to Broadus' testimony in which Stinson said they were "replaced." It seems more than purely coincidental that Pugh's testimony and Broadus' testimony should contain the same discrepancy as the entry made by Goff, Stinson's secretary, on the personnel folders of these employees. Rather, it appears more probable that Stinson himself made the arguably inconsistent statements on the morning of May 28. Last, and most importantly, my finding is based on careful reflection and analysis of Pugh's demeanor in testifying. Pugh testified in a very straightforward and impressive manner, taking much care to be as specific as possible and not to be led in his testimony either by counsel for the General Counsel or Respondent. Consequently, I find that Stinson made the statement to Pugh and other employees on the morning of May 28 that he had fired the strikers/picketers.

Sometime during the morning on May 28, Roy Thomas reported directly to the Ingalls shipyard and, for a reason which was not explained, was not able to obtain security clearance to enter the facility until sometime after noon. Stinson then told Thomas not to bother to report that day but to report the next day. Thomas then reported for work for the first time on May 29. According to Respondent, Thomas replaced George Lee, a laborer.

As indicated previously, Robert Martin did not show up at the Rebel store on the morning of May 28 and did not report to work at all that day, nor the following day, May 29. Martin appeared at the home of Colley on the evening of May 29 and inquired if the job was still available. Colley indicated it was. Martin came to Respondent's facility for the first time on May 30. Martin, who is apparently uneducated, had an employment application filled out for him for the first time on May 30 by Stinson's secretary. It reflects no prior experience. Nevertheless, Martin was put to work by Respondent. According to Respondent, Martin replaced trowel mechanic Joe Cooper.

Also on May 30, David Stallworth reported to work for the first time. According to Respondent, Stallworth replaced trowel mechanic Noble Mann.

E. *The Termination of Broadus and Nelson*

Following the strike on May 27, Respondent continued through June 5 the practice of having employees meet at the Rebel store in order to be transported to the worksite in company trucks. On June 5, Stinson told employees, including Broadus and Nelson, that beginning the following day they would no longer be driven to the shipyard in company trucks but instead should resume driving themselves.[8]

On the morning of June 6, after parking in a nearby parking lot, Broadus and Nelson walked through one of the unmarked and unmanned "gates," i.e., a fence opening, located near an Ingalls security guard shack. They then proceeded to work by walking across a supervisor parking lot, over a bridge, through a security guard post, and on to Respondent's office. At approximately 11:30 a.m., 15 to 20 minutes before the scheduled lunch break, a fire drill was held aboard the ship on which Broadus and Nelson were supposed to be working. In such a fire drill situation it is necessary for Respondent to be able to certify to Ingalls that all employees aboard the ship have exited and are accounted for. When the fire drill occurred, Broadus and Nelson did not exit the ship with other employees, and Stinson was not able to locate them or account for their whereabouts.

Stinson and Gerry Wilson, plus two other employees, then got into the Company truck in order to leave the facility for lunch. They first went to the Ingalls main gate, inquiring if the guard had opened the Steigerwald gate for any of Respondent's employees. The guard indicated he had not. They then drove to Respondent's gate. While waiting at the gate for an Ingalls guard, who had been summoned to open the gate, Stinson spotted Nelson and Broadus, lunches in hand, coming across the parking lot outside the fence. He went inside the fence near them and talked to the two employees, asking them where they had been. He informed them that they had left the ship early, and that they had no business doing that. In addition, he indicated to them that they had gone out through the wrong gate. Stinson then told them to go back to the ship.

As Stinson went back to the truck, Broadus and Nelson again walked through the unmarked-unmanned opening in the fence, across the supervisor parking lot and towards the bridge gate. At that point, the Ingalls guard came to open the Steigerwald gate, and Stinson told the guard that two of his employees had used the wrong gate and that they should be stopped. The Ingalls' guard used a walkie-talkie to contact another guard at the bridge gate, and the two employees were stopped by the guard at the bridge gate. They were then taken to the Ingalls security guard office, where their security badges were taken from them. The next day Broadus and Nelson were allowed to come to Respondent's office inside the yard, to pick up their tools. Stinson told the employees that there was nothing that he could do, since Ingalls had picked up their badges. He indicated that he would try to bring them back at a later date. Consequently, Broadus and Nelson's employment was terminated effective June 6.

Subsequently, two additional employees, Tony Pierce, who had been hired to replace one of the picketers, and

[8] Broadus and Nelson had both honored the picket line on May 27 and refused to go to work. Both individuals had been observed by Steigerwald, Dragunas, and Stinson engaged in conversations with picketers at the picket line on that day. Nevertheless, both individuals, like all individuals who did not work on the day of the strike except the picketers themselves, were allowed to return to work on May 28.

Mike Everhart also came in through the wrong gate and had their badges taken from them by Ingalls security. These employees also were not allowed to come back into the shipyard. When Broadus, Nelson, Pierce, and Everhart were terminated as a result of having their security badges taken from them by Ingalls, none of the picketers were offered the opportunity to fill the vacancy created by these four people. Also, Marine Superintendent Stinson admitted that after Pierce and Everhart were terminated, they were later rehired to work for Respondent in a warehouse located off Ingalls' shipyard premises where security badges were not necessary. Neither picketers nor Broadus and Nelson were offered the opportunity for warehouse work.

F. *Subcontracting of Work*

Counsel for the General Counsel contends that Respondent subcontracted certain work—the preparation for and application of nonskid coating in Hull No. 4601—in June 1980 in order to avoid having to recall picketers. Respondent denies this allegation.[9] The record reflects that as early as March 1979 Respondent was considering the possibility of subcontracting this and other work and received a price quotation for it from a Douglas Call Co., Inc. Respondent, however, did nothing more regarding the subcontracting of this work for more than a year. Sometime during early to mid-May 1980, Respondent met with L. E. Wilks, Jr. d/b/a Jackman Construction Company (herein called Wilks) and again discussed the possibility of subcontracting this work. At a second meeting, the date of which is unknown, Wilks quoted Respondent a price for this work which was to include all labor and equipment.

On June 6, Respondent gave Wilks a verbal commitment to perform the work.[10] By letter of that same day, Respondent requested the necessary permission from Ingalls to subcontract this work as required by its contract.

On June 15, Marine Superintendent Stinson telephoned picketer George Lee, a laborer, to offer him the opportunity to return to work. Lee was not home, however, and Stinson left a message with Lee's wife for Lee to telephone him. On June 16, Lee returned the call to Stinson. As is admitted by Respondent, Stinson told Lee he could not recall Lee after all; that on the preceding day, after Stinson spoke to Lee's wife, Stinson had spoken to Steigerwald, and Steigerwald had instructed Stinson not to hire anyone because of the pending unfair labor practice charges.

On June 17, Ingalls granted Respondent permission to subcontract the nonskid coating referred to above.[11] Thereafter, sometime prior to June 27, Wilks informed Respondent that Wheelabrator-Frye corporation would not agree to rent him a sophisticated piece of machinery necessary to perform the nonskid work, but would be willing to rent the equipment only to Respondent directly. Respondent then rented the machine itself, which was shipped on June 27 and placed on board the ship on June 30. On July 1, work was begun by Wilks with a July 3 completion deadline on the helicopter hanger deck and the flight deck. On July 2 Stinson phoned Steigerwald to report that Wilks was not working. Steigerwald told Stinson that he and Respondent's own employees were to take over the job themselves. In Respondent's July 16 letter to Ingalls explaining its relationshop with Wilks, Steigerwald states:

> [W]e were cutting much too close to July 3rd and at that rate would have to blast and coat all night Wednesday and straight through until Thursday night and even then there was very little chance for meeting the completion deadline. I told Wayne Stinson to do whatever was necessary to get the job done.

In spite of Stinson and Respondent's employees taking over and performing this work, with the additional help of Wilks, it still was not completed until July 7, 3 days past the deadline. Throughout this period, Respondent did not attempt to recall any of the picketers.

With the hanger deck and flight deck work completed on July 7, Respondent then faced a deadline of July 16 for completion of outside nonskid material. Steigerwald instructed Dragunas to stay on the job in Pascagoula to oversee completion of this work. On July 9, Steigerwald made the decision to remove Wilks from the job and have Respondent take over all remaining work with its own employees. Although Respondent did so, and thus had to divert its employees from work they would otherwise have been assigned, Respondent again made no effort to recall any of the picketers. In Respondent's July 16 letter to Ingalls, quoted above, Steigerwald stated in significant part:

> Several days before starting the job, I discussed the possibility of not using Mr. Wilks, but rather use our own men. This would have led to several problems, the *greatest of which was our union negotiations.* [Emphasis supplied.]

Respondent's entire operation at the Ingalls shipyard is nonunion, and I find this to be a clear and unmistakable reference to the Union's organizational campaign which is the subject of this case.

Prior to July 22, Respondent interceded with Ingalls on behalf of Nelson, Broadus, Pierce, and Everhart, the four individuals who had been terminated as a result of going through the wrong "gate" and having their secu-

[9] During the hearing, Respondent stipulated with counsel for the General Counsel that at a later date G.C. Exhs. 28 and 29, copies of June 5 and July 6, 1980, letters from Respondent to Ingalls, might be introduced into the record. This agreement was reached because the documents were not available at hearing. The documents are discussed in the briefs of both parties. Therefore, pursuant to the General Counsel's motion, G.C. Exhs. 28 and 29 are received into evidence. These exhibits, and Resp. Exhs. 12 and 13, are relied on extensively in describing below facts regarding the subcontracting of this work.

[10] No written contract was ever signed between Respondent and Wilks, something that Respondent admitted was highly unusual.

[11] Permission was granted by Ingalls with the express understanding that Respondent was not relieved of its own liability for completion of the work in a timely manner pursuant to its contract with Ingalls.

rity badges taken from them. Ingalls agreed with Respondent that it could rehire these four individuals, and on July 22 each was offered employment. Although it is thus apparent that there was sufficient work for at least four additional people, Respondent failed to offer any of the positions to any of the picketers.

G. *The Layoff of Sellers*

On July 31, Respondent recalled/reinstated its first picketer. On that date, Kenneth Sellers was returned to his former position as a terrazzo grinder, even though his replacement, Tony Pierce, was still working and remained employed as of the hearing herein. It is thus apparent that whatever Respondent's reason may have been for recalling Sellers, it was not occasioned by his prior position having become vacated.

Sellers testified that on the first day of his return to work, he and employee Kenneth Wilks were in Respondent's office when they overheard a conversation between Marine Superintendent Stinson and a supervisor of Ingalls whose name they did not know but who they recognized to be from Department 17. Sellers testified that the conversation was initiated by the Ingalls supervisor asking Stinson if he had any jobs, that he knew somebody who needed a job. Stinson replied that he did need people, but that he could not hire anyone because of the seven picketers that were laid off. Stinson added he would see the seven picketers that were laid off sitting on the street corner starving before he would bring them back to work. Stinson denied making the statements attributed to him by Sellers. Although Wilks' version varies slightly from Sellers, this variation is only in minor details which no two individuals are likely to recall in exactly the same way. In significant respects, Wilks' testimony corroborates Sellers that Stinson made the statement he would let the seven picketers stay out and starve before he would hire them back. The fact that one of the seven picketers—Sellers himself—had just been reinstated reflects more on Stinson's memory, if not his credibility, than on the credibility of Sellers and Wilks. The issue before me is whether Stinson made the remarks in question and their significance to this case, not whether Stinson's comment might be taken issue within fact. I credit Sellers, whose testimony is substantially corroborated by Wilks.

Employees Broadus and Nelson testified that about a week after their recall, Stinson called them into the office in the presence of Kenny Broadus and said he had heard that they had been "talking about the Union on the job." According to both employees, Stinson said that they were not to do so in the future. On cross-examination, Broadus was very specific that Stinson did not prohibit talk about the Union only while he and others were "working" but rather prohibited it "on the job." Broadus, however, testified he personally understood this to mean while on the ship working.

Employee Sellers testified that during this same time period, and specifically between August 11 and 14, Stinson approached him while at work in one of the ship galleys. Stinson told Sellers he had heard Sellers had attempted to get other employees to join the Union. According to Sellers, Stinson then stated he did not want Sellers "to talk about the Union on the job." Stinson admitted that he had conversations with Broadus and Nelson, and with Sellers, shortly after their return to work. According to Stinson, however, who admits saying the same thing to all three, he told them "they could solicit for the Union all they wanted to but not to do it on my working time." Stinson also testified, and Broadus admitted, that prior to the conversation each employee had been given a copy of company rules and regulations, one of which provides:

> Solicitation or the circulation of patitions [sic] or distribution of written material for any reason not related to company business, on company property during working time, will result in discharge.

Stinson, however, makes so assertion that in the conversations with Broadus and Nelson, or in the conversation with Sellers, he referred them to this rule, and counsel for the General Counsel does not attack the validity of the rule itself. Rather, he argues that Stinson's statement to Broadus and Nelson, and to Sellers, itself constitutes an overly broad rule or the unlawful enforcement of a lawful rule. As between the versions given by Broadus and Nelson, and by Sellers, and that given by Stinson, I credit the mutually consistent testimony of Broadus, Nelson, and Sellers that Stinson cautioned them against "talking about the Union on the job."

On or about August 13, Marine Superintendent Stinson and Sellers got into an argument concerning the need to work overtime. Sellers concedes that during this argument Stinson told Sellers he could give Sellers a warning for refusing to work overtime. Sellers replied that he had previously talked with Union Business Agent Kelley and knew that he could be assigned to work overtime. Sellers nevertheless declined to work overtime which Stinson had asked him to work. Stinson did not inmediately press the issue.

On August 15, as Sellers was installing a terrazzo floor in a ship, Stinson approached him and took him off to the side. There Stinson handed Sellers a layoff slip. This slip read in pertinent part as follows: "You are hereby advised of being laid-off as of 8/15/80 due to lack of work. We regret we can no longer keep you employed. Should work pick up, we will be in contact." On September 15, Respondent hired a new terrazzo grinder, Joe Robertson without first calling Sellers. Several days later, while at the timeclock adjacent to Stinson's office, employee Kenneth Wilks heard Stinson remark that he was tired of Sellers bringing up Kelly's name every time he told Sellers what to do. Stinson did not deny that he made this statement about Sellers. In fact, he admitted that he made an almost identical statement to Sellers himself. Stinson testified that it had been reported to him by Supervisor Colley that Sellers had refused to carry out various minor work assignments, threatening to go to business agent Kelley if he was required to do them. Stinson went directly to Sellers. Stinson told Sellers that he was tired of hearing Kelley's name brought up as a threat every time management asked Sellers to do something and that Stinson did not want to hear it anymore. It was shortly after this that Stinson and Sellers got into

an argument on August 13 when Sellers refused to work overtime.

H. *The Discharge of Broadus*

On August 31, Ingalls' representatives were conducting a final inspection of a ship prior to delivering the ship to the Navy. As part of this inspection, Ingalls test engineers Michael Hinkle and Ronald Waldrup were going through the ship compartment by compartment to inspect the plumbing facilities. Broadus and some other employees were doing touchup work in various berthing areas aboard the ship. Hinkle and Waldrup testified that as they entered the wash area where Broadus was working, they observed him urinating in a sink. Waldrup asked Broadus what he was doing urinating in the sink, and Broadus replied that he had weak kidneys.

Broadus testified that in fact he had not urinated in the sink, claiming instead that he was only tucking in his shirt. Broadus, however, admitted the conversation between him and Waldrup as described above. Broadus testified he responded as he did because he thought Waldrup was kidding.

Even though Broadus denies urinating in the sink, it is clear, by his actions and his response to Waldrup, that Broadus left the clear impression he admitted urinating in the sink. Moreover, I credit Waldrup, who is an uninterested party to this proceeding, that Broadus in fact urinated in the sink.

Waldrup notified Ingalls' ship superintendent, Bradston, about the incident and Bradston notified Stinson. What occurred next is the subject of some doubt. Stinson testified he went to the berthing area in question and asked the group of employees, including Broadus and Nelson, which employee had been caught urinating in the sink, to which Broadus replied, "I did." Broadus denied that this conversation occurred. Nelson testified he could not recall such a conversation. Bradston testified that it had been reported to him the employee had urinated in an inoperable urinal, not a sink; that he directed Stinson to meet him in the berthing area; and that he and Stinson met Waldrup who showed them the urinal in question. Bradston's testimony is so different from any other of Respondent's witnesses that one's initial response is to wonder whether the entire incident is fiction. Closer analysis, however, reveals that Bradston is simply in error about the matter involving a urinal rather than a sink. Even Broadus admits that the incident occurred in a sink. Bradston's confusion can be explained in part by his testimony that even if the employee had used a urinal this would still call for discharge because there is an absolute prohibition against using toilet facilities on board any ship. Thus, while it is impossible to determine precisely what occurred after Bradston reported the incident to Stinson, it is clear that at some point it came to Stinson's attention that Broadus was the employee involved in the incident—a fact Broadus does not deny.

Stinson took no action at the time, but later checked with the Industrial Relations Department at Ingalls as to what action should be taken. Ingalls indicated that if it had been one of their employees, the individual would have been fired. The following day, August 22, Broadus was told to report to the west bank of the shipyard where Stinson was working. When Broadus arrived, Stinson told Broadus he was discharged because he had been caught urinating in the sink. When Broadus denied that he had urinated in the sink, Stinson replied that an Ingalls representative had seen him do it and that he would have to let him go. Broadus testified that Stinson then told him not to run to the Union and stir up a bunch of trouble over his discharge and that in 30 days he would recall Broadus. Stinson denied this latter statement. On August 26, a new tile mechanic was hired to take Broadus' place. Respondent did not attempt to offer this position to any of the picketers.

I. *The Recall of Tardy*

On September 8, picketer Joseph Tardy was reinstated by Respondent. Upon his recall, Tardy was assigned work as a laborer. Counsel for the General Counsel alleges that Respondent violated the Act by recalling Tardy as a laborer rather than the previous position which he occupied as "apprentice tile mechanic." Respondent argues that Tardy was a laborer prior to the strike and was properly recalled to that position.

Tardy concedes that when he was hired by Respondent on February 12, 1980, it was to the position of a "laborer." Tardy asserts that at the time he was hired, he expressed an interest in laying tile. However, there was no tilework available at the time. Tardy claims he was promised such work when the need arose. Dragunas admits that at the time he hired Tardy, Dragunas promised Tardy he "would try him out in different fields." For approximately the first month, Tardy performed various odd jobs for Respondent, including building a small building used to store tools and materials. During this time Tardy received $6.04 per hour.

According to Tardy, after the first month, and continuing thereafter for a month to 6 weeks, Tardy performed tilework on a regular basis. At the time of his assignment to tilework, Tardy received a raise of $1 per hour to $7.04. After approximately 3 weeks to a month, Dragunas promoted Tardy to a position as supervisor over other tile mechanics. Although Dragunas admits promoting Tardy, he also claims that Tardy's tile laying ability was never satisfactory. I discredit Dragunas in this respect for his claim is belied by the fact that Tardy received such accelerated advancement to a position of supervisor over other tile mechanics.

Tardy continued to function as a supervisor for approximately 3 weeks to a month. It is clear that during this time Tardy was not a popular supervisor, and Respondent received complaints from several more experienced tile mechanics about Tardy's approach to supervision. Therefore, by mutual agreement between Dragunas and Tardy, Tardy gave up this supervisory function. Tardy claims, and Dragunas concedes, that from then until the time of the strike, except for a few days when Tardy was laid off for lack of work, Tardy continued to repair unsatisfactory work of other tile mechanics by removing those tiles and replacing them with different tiles. When Tardy was recalled to work on September 8 after the strike, he was not assigned such work although Respondent does not deny that it was available. Rather,

Tardy was assigned the more onerous work of a laborer, the position into which he was initially hired.

Tardy testified that approximately 2 to 3 weeks after his recall in September, Tardy had a conversation with Dragunas in Respondent's office. According to Tardy, Dragunas accused Tardy of instigating the strike. When Tardy denied any leadership role in the strike, Dragunas told Tardy to shut up or he (Dragunas) would fire Tardy again. Dragunas denied that any such conversation ever took place. In support of Dragunas' claim that the conversation never occurred, Respondent introduced records showing that on almost every workday (Monday through Friday) in September Dragunas was present at the Maryland Shipbuilding and Drydock Company in Baltimore, Maryland. These records reflect, however, that Dragunas was absent on Friday, September 19 and on Saturdays in September. Therefore, I must conclude that these records themselves do not establish, as Respondent argues, that the conversation could not have occurred. As between Tardy and Dragunas, I credit Tardy. In doing so, I particularly note that his testimony regarding this incident is corroborated by employee Darryl Pugh, whose demeanor I have already commented upon above.

On September 15, October 16 and 17, and November 4 and 17, Respondent hired five new employees, all to positions as laborers. On December 15, Respondent hired a new employee to the position of tile mechanic. Respondent did not offer any of these positions to any of the remaining picketers, and none of them have been offered reinstatement since then.

IV. ANALYSIS AND CONCLUSIONS

A. *The Discharge of Picketers*

One of the primary issues, and perhaps the most difficult issue, is whether Respondent discharged or otherwise terminated the seven individuals who picketed Respondent on May 27 because of that activity. It is not possible to look at any one act or event in order to determine whether Respondent accorded the picketers the necessary recognition of their continued employment status. Instead, one must consider a number of incidents in perspective to determine whether picketers were in fact terminated. Upon careful examination of the entire record, I conclude that the individuals who picketed Respondent on May 27 in reality had their employment status severed by Respondent for engaging in such activity. In reaching this conclusion, I rely on the following factors—not alone but in combination with one another: (1) On the morning of May 27, the day of the strike, Stinson threatened employees that people wearing picket signs would be fired. This statement is, of course, itself a threat of discharge in violation of Section 8(a)(1) of the Act. (2) Respondent admittedly decided on May 27 to take some action only against those seven employees who were observed carrying picket signs and not against any other employees who did not report to work. Respondent asserts in effect that it had a legal obligation to replace only those who picketed because, it claims, those are the only employees who Respondent objectively knew supported the strike. In support of its argument Respondent cites *E. L. Weigand Division, Emerson Electric Co.*, 246 NLRB 1143 (1979), for the proposition that before an employer may take lawful action, including permanent replacement, against a striker, the employer must first have objective evidence that the particular employee is participating in the strike. Assuming Respondent's interpretation of *Emerson Electric* is correct, its argument nevertheless overlooks the fact that it chose to take action only against picketers even though other employees also objectively demonstrated their participation in the strike and Respondent was aware of this. Respondent witnesses admitted that during the day on May 27 they observed numerous employees approach the picket line, converse with the picketers, and leave without reporting to work. Respondent witnesses also admit that they observed employees Keith Broadus and Dwight Nelson at the picket line on several occasions on May 27 conversing with picketers. There is no evidence whatever, and Respondent does not even argue, that any of these employees were prevented from reporting to work as a result of threats or other misconduct by picketers. There simply is no basis in this case for Respondent to conclude that only picketers were participating in the strike. Nevertheless, Respondent consciously chose to single out only picketers as the individuals against whom it would take action. Although the singling out of picketers is not itself evidence that they were discharged, it is evidence of animus and a discriminatory motive harbored against picketers for engaging in this activity. (3) On the morning of May 28, the day after the strike, Stinson observed the picketers present at the jobsite ready for work. However, he proceeded to first hire Urban, Williams, and Mickey Colley before approaching the picketers to tell them they had been permanently replaced. Unable or unwilling to explain the difference to them between being discharged and permanently replaced, Stinson then returned to the office where he announced to assembled employees that he had just fired all the people that were on strike. This too is an independent violation of Section 8(a)(1) of the Act. (4) Also on May 28, Stinson's own secretary made the following entry on the personnel files of each of the seven picketers: "Terminated. Reason: While walking the picket line they were replaced." Although Respondent argues that the entries were made by Stinson's secretary totally on her own, and although Respondent called the secretary to testify, Respondent failed to have the secretary explain these entries. Stinson's statement to employees and his secretary's entry on the personnel files of picketers provide further support for the conclusion that the picketers were discharged or terminated. (5) Replacement Robert Martin did not report to work at all on May 28 or May 29. When Martin appeared at Colley's home on the evening of May 29, he was told the job was still open. Martin was not hired by Respondent until May 30. This fact also suggests that Respondent considered the picketers' jobs vacated and the picketers terminated as of the time of the strike. (6) At least two other replacements are demonstrably inadequate to substitute for the employees who Respondent contends they replaced. Respondent asserts that Tony Pierce replaced Sellers and

that Mickey Colley replaced Tardy. Although Respondent claims that Sellers' work as a terrazzo grinder was less than adequate, the record is absolutely clear that prior to the strike Sellers was utilized exclusively as a terrazzo grinder. Pierce's application for employment, however, reflects sporadic employment in a 7-month period for three different employers and that his only employment was as a carpenter. Further, although Respondent contends that Tardy was a laborer, the record reflects that Tardy performed such work for only about the first month of his employment. Thereafter, he was utilized to lay the tile and was even accorded an opportunity, albeit aborted, to supervise. At the time of the strike, Tardy was laying tile. Mickey Colley's application for employment reflects that Colley had only recently graduated from high school and had absolutely no prior employment history. The evidence is clear that neither Pierce nor Colley had the experience or qualifications to replace Sellers or Tardy. This fact suggests that Respondent was primarily interested in ridding itself of the picketers rather than in hiring other employees capable of replacing them and supports a conclusion that the picketers were discharged or terminated. (7) On June 15, Steigerwald instructed Stinson not to hire anyone because of the pending unfair labor practice charges. As a result, Stinson informed Lee of Steigerwald's decision and withdrew the offer of reemployment. Stinson's statement to Lee and its withdrawal of the offer also constitute separate and independent violations of Section 8(a)(1) of the Act. *The O'Hare Hilton*, 248 NLRB 255 (1980); *W. H. Scott d/b/a Scott's Wood Products*, 242 NLRB 1183 (1979); *Welsbach Electric Corporation*, 236 NLRB 503 (1978). They also evidence a more far-reaching effort on Respondent's part to rid itself of the picketers. (8) Prior to having subcontractor Wilks begin work on July 1, Respondent considered using its own employees to perform the work, but decided not to do so because, as Respondent's July 16 letter to Ingalls states, "This would have led to several problems, the greatest of which was our union negotiations." (9) On July 31, Marine Superintendent Stinson was overheard to say that he could not hire anyone because of the seven picketers, and he would see them sitting on the street corner starving before he would bring them back to work. (10) In late September, when reinstated picketer Tardy denied the accusation of Marine Superintendent Dragunas that he had been a leader in the strike, Dragunas told Tardy to shut up or he would fire Tardy "again." In addition to evidencing that Tardy and other picketers in reality had been fired, such a statement also constitutes an unlawful threat of discharge in violation of Section 8(a)(1) of the Act. (11) The numerous times that job openings occurred after May 28, as detailed below, and Respondent refused to recall any of the picketers.

Each of the 11 factors enumerated and discussed above, considered in conjunction with one another, contribute to my conclusion that the picketers were discharged. This conclusion is strengthened even more when these factors are considered in conjunction with the fact that as of approximately 5:30 p.m. on May 27, the day of the strike, Respondent knew that the strike had been terminated and that its striking employees would return to work the following morning. In spite of knowing this, Respondent proceeded to hire "replacements" for the picketers. From all of these factors I conclude, much as the entry on their personnel records, that the picketers were in reality "terminated . . . while walking the picket line."

B. *The Replacement of Picketers*

The General Counsel alleges, and Respondent denies, that even if the picketers were not discharged for engaging in such activity, nevertheless picketers were discriminated against by Respondent in the manner in which they were replaced. I find merit to the General Counsel's position.

The first "replacement," Tony Pierce, was hired on May 27 while the picketing was still in progress. According to Respondent, Pierce replaced Sellers. The business justification of replacing strikers is an affirmative defense, and the burden of establishing that replacements were bona fide is upon Respondent. *Fitzgerald Mills Corporation*, 133 NLRB 877 (1961); *Leon Ferenbach, Inc.*, 212 NLRB 896 (1974). As discussed at length above, however, Pierce is demonstrably inadequate and incapable of performing the work of Sellers, a terrazzo grinder. Respondent does not point to any other replacement who was capable of or hired to perform such work, and there is no independent evidence to establish this. Consequently, I conclude that when Sellers attempted to return to work on the morning of May 28, such work was still available, and Respondent was obligated to reinstate Sellers for such work. By failing to do so, Respondent unlawfully discriminated against Sellers in violation of Section 8(a)(3) of the Act. *W. C. McQuaide, Inc.*, 237 NLRB 177 (1978).

Counsel for the General Counsel also contends that before any replacements were hired, the picketers first terminated their strike and/or made an unconditional offer of reinstatement to Respondent. Respondent conversely argues that Sellers was hired while the picketing was still in progress; that it appointed Supervisor Henry Colley to act as its agent in finding replacements for the strikers; and that Colley had hired such replacements before any picketers made any unconditional offer to return by reporting to work on the morning of May 28. The issue with respect to Pierce and Sellers is disposed of above. I agree with Respondent that it appointed Colley its agent to seek replacements for the strikers. However, from Colley's testimony it is clear that the extent of his authority was to recruit potential replacements; he had no authority to hire or offer employment to such people. Only Stinson, Dragunas, or Steigerwald had the authority to hire individuals recruited by Colley. In fact, such recruits were not hired or made job commitments until hired by Stinson at Respondent's office on the morning of May 28. Before any of such recruits were hired, Respondent had already been notified on the previous evening by Joseph Hayes, Ingalls' director of labor relations, that the strike against Steigerwald had terminated and that its employees would be back to work the next morning. Further, before any recruits were hired, the picketers themselves had shown their desire to return

by reporting to work on the morning of May 28 where they were observed by Stinson. Consequently, by going ahead and hiring replacements, Respondent effectively discharged the picketers in violation of Section 8(a)(3) of the Act. *Richard C. Knight Insurance Agency Inc.*, 243 NLRB 604 (1979); *W. C. McQuaide, Inc., supra.* Moreover, even if I were to find that Colley had the authority to hire or make job commitments to potential replacements, I would nevertheless find that Respondent discriminated against the picketers. The telephone call from Hayes to Dragunas was itself sufficient to put Respondent on notice that its striking employees, both picketers and nonpicketers, had terminated the strike and would return to work the following morning. All of the replacements recruited by Colley were contacted on the evening of May 27, after Hayes' call to Dragunas. Dragunas could easily have notified Colley to suspend his search for replacements, but chose instead not to do so. Therefore, by going ahead with its decision to replace the picketers, Respondent unlawfully discriminated against them in violation of Section 8(a)(3) of the Act.

C. *The Discharge of Broadus and Nelson*

Counsel for the General Counsel alleges, and Respondent denies, that Keith Broadus and Dwight Nelson were discharged on June 6 because of their support for the Union.

Broadus' and Nelson's support for the Union was openly demonstrated and made known to Respondent on May 27. During the strike, they were observed by Respondent at the picket line on several occasions talking and visiting with picketers. Respondent, however, made no effort to replace them. On the following day, May 28, they were allowed to return to work without incident.

After May 28, Broadus and Nelson continued to work each day until their discharge on June 6. From May 28 through June 6, Broadus and Nelson along with other employees were transported to the jobsite on a daily basis in trucks owned by Respondent. There is no evidence that between May 28 and June 6 Respondent threatened, intimidated, or coerced Broadus or Nelson in violation of Section 8(a)(1) of the Act. Further, although there is considerable evidence of animus on Respondent's part toward the picketers, there is no evidence that Respondent exhibited any animus toward other employees who remained away from work on May 27, including Broadus or Nelson.

On June 6, as described in detail above, Broadus and Nelson left their work stations without the knowledge or permission of Respondent. While they were gone, a fire drill took place, resulting in a potentially critical situation because Respondent was unable to account for their whereabouts. Several minutes later, as Stinson and other employees were leaving for lunch, Broadus and Nelson were observed returning to the jobsite. After a brief conversation with them at the fence, Stinson told Broadus and Nelson to go back to the jobsite, which they immediately did by using one of the "gates" which Ingalls prohibited Respondent's employees from using. At that moment an Ingalls' security guard arrived in the area to open the proper gate for Stinson. Stinson then notified the guard that Broadus and Nelson had used an improper "gate." As a result, Broadus and Nelson had their security passes taken from them by Ingalls which resulted in their termination by Respondent. There is no question that Broadus and Nelson were victimized to a significant extent by Stinson, who told them to return to the jobsite immediately and then caused their discharge for using an improper "gate" which at the time was the only means possible of carrying out Stinson's direction. Nevertheless, the incident would never have occurred had it not been for Broadus and Nelson leaving their job posts without permission at a potentially critical time. Further, the entire incident at the fence and with the guard occurred so quickly that it is highly improbable Stinson could have acted with any premeditation or forethought. Rather, it is much more likely, and I conclude, that Stinson acted out of self-preservation, feeling that if the guard noticed Broadus and Nelson using an improper "gate" with Stinson present and condoning their actions, he might get himself in trouble.

The conclusion that Broadus and Nelson were not discriminated against by Stinson because of their union sentiments is also supported by the manner and timeliness in which they were recalled, particularly in comparison to the picketers. After Broadus and Nelson were terminated, two other employees, Everhart and (replacement) Pierce, were also terminated as a result of using the wrong "gate" and having their badges taken away by Ingalls' security personnel. Respondent later interceded with Ingalls on behalf of all four individuals. Respondent was given permission to rehire them, which it did on July 22. Respondent's action in interceding on their behalf runs counter to a conclusion that it caused their discharge for a discriminatory motive. For all of these reasons, I conclude that Respondent's (constructive) discharge of Broadus and Nelson on June 6 was not the result of any unlawful motive, and I shall dismiss that portion of the complaint.

D. *The Layoff of Sellers on August 15*

On August 15, Respondent laid off or terminated Kenneth Sellers. Counsel for the General Counsel alleges Sellers was terminated, while Respondent contends Sellers was laid off and still has an expectancy of being recalled. I find it unnecessary to determine whether Sellers was terminated or laid off inasmuch as the remedy would be the same in either case if the motive for Respondent letting Sellers go was unlawful. Therefore, the only issue before me is Respondent's motivation for ceasing Sellers' active employment on August 15.

In assessing Respondent's motivation for laying off Sellers, I am guided by the test recently enunciated by the Board in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980). In doing so, I conclude that the evidence adequately supports the inference that Sellers' protected activity was a motivating factor in Respondent's decision to lay off Sellers and that Respondent has failed to carry its burden to demonstrate that the layoff would have taken place even in the absence of Sellers' protected activity.

There is considerable evidence that Respondent, and particularly Stinson, harbored considerable animus

toward Sellers and the other picketers for having engaged in protected strike activity on May 27. This is evidenced by several violations of Section 8(a)(1) cited above. It is also evidenced particularly by Stinson's statement as late as July 31 that he would see the seven picketers sitting on the street corner starving before he would bring them back to work. Moreover, Stinson had reason to harbor such animosity particularly against Sellers since, as indicated above, it was his complaints which caused Stinson to hold a meeting with employees on the day before the strike and which served as an immediate catalyst for the strike.

Also just a few days before Stinson laid off Sellers on August 15, i.e., sometime between August 11 and 14, Stinson told Sellers he had heard Sellers had attempted to get other employees to join the Union. Stinson then warned Sellers not "to talk about the Union on the job." I find this warning by Stinson, and the similar earlier warning to Broadus and Nelson, to be the imposition of an unlawful no-solicitation rule in that it prohibits union activity other than on "working times" in "working areas." *Republic Aviation Corporation* v. *N.L.R.B.*, 324 U.S. 793 (1945); *Essex International, Inc.*, 211 NLRB 749 (1974).

Based on all the above, I conclude that Stinson's layoff of Sellers on August 15 was substantially motivated by Stinson's animosity toward Sellers for engaging in protected activity. I therefore necessarily reject Respondent's argument that Sellers' protected activity played no part in his layoff. While Respondent does not argue that the layoff would have taken place in any event, even if part of Stinson's motive was unlawful, and I might conclude, *ipso facto*, that it has failed to carry its burden in that regard, I shall nevertheless consider the merit of that position. Not to do so would, I believe, provide less than full consideration to the substance of Respondent's position.

Both before the strike and after Sellers' reinstatement, Respondent remained steadfast in its response to Sellers that before it would give him the demanded raise, he would first have to prove his ability to perform superior work by "selling" a room to Ingalls (i.e., completing a room such that it passed Ingalls' inspection and was accepted by them). Sellers felt very strongly that he had already done so, and testified accordingly. Whether he had or not is unnecessary for me to decide for it would make no difference to the issue before me. Neither party contends that Sellers' ability played any part in the layoff. There is some evidence to suggest that, when Respondent refused Sellers' persistent requests for a raise, Sellers responded by refusing to perform various minor jobs assigned to him by Colley and on August 13 by refusing to work overtime.

Sellers was reprimanded by Stinson on two occasions for refusing to perform the assigned work. Sellers was not recalled by counsel for the General Counsel to deny that he refused to perform minor jobs assigned by Colley or that he was reprimanded by Stinson for doing so. Sellers admits that when he refused to work overtime, Stinson told him he could be given a warning slip.

Respondent, through Stinson, asserted that it laid off Sellers on August 12 (1) because of Sellers' prior refusals to perform work and (2) work had slackened to such a level that it could justify a layoff. For reasons expressed above, I have rejected Respondent's argument that Sellers' protected activity played no part in his layoff. For the following reasons I also conclude Respondent has failed to demonstrate the layoff would have taken place even in the absence of Sellers' protected activity. While Stinson reprimanded Sellers for refusing to perform certain minor work tasks and refusing to work overtime, Stinson never warned Sellers that these might lead to his layoff or termination. Indeed, Respondent asserts that Sellers was only laid off and not terminated, a position which itself minimizes the severity of Sellers' actions. I also find it significant that Sellers' refusal to perform work was not advanced, relied on in any way, or even mentioned by Respondent in its layoff notice to Sellers. I also note that the reason given Sellers for his layoff was factually untrue and that Stinson's position at the hearing represents a shifting position from that advanced in the layoff notice. Sellers was told unequivocally his layoff was due to a "lack of work." At the hearing Stinson did not assert any "lack of work" but only that work had slacked such that he could justify a layoff. Further, Respondent introduced no business records or reports of any kind to substantiate Stinson's claim that work had slacked. Respondent did not even provide corroborative testimony from Steigerwald, Dragunas, or any other witness that work had slacked. Without this, I reject Stinson's claim that work had slacked. I do so because of Stinson's demeanor, the shift which this position takes from that advanced in the layoff notice, and the fact that only 2 days before the layoff, work was at such a high level that it was necessary to assign employees to work overtime. The use of false and shifting reasons for Sellers' layoff not only undercuts any claim that Sellers would have been laid off even in the absence of protected activity, but itself suggests that Respondent was trying to mask its real reason and gives rise to the inference that the real motive was an unlawful one. For all of these reasons, I find that Sellers was laid off/terminated on August 15 in violation of Section 8(a)(1) and (3) of the Act.

E. *The Discharge of Broadus on August 22*

On August 21, representatives of Ingalls caught Broadus urinating in a sink on board a ship. Ingalls in turn notified Respondent. When Respondent asked Ingalls what action should be taken, Ingalls responded that if it had been one of their employees, the individual would have been fired. The next day Broadus was discharged.

I conclude that Broadus' discharge had nothing whatever to do with his union sentiments. Contrary to the General Counsel's argument that Respondent seized upon an "unsubstantiated allegation" to discharge Broadus, the evidence reflects that Respondent took its action based on an eyewitness account to Broadus' act. Further, it was Ingalls who reported the incident to Respondent and it was Ingalls who suggested that the appropriate response was discharge. I conclude that by responding as it did to a matter of obvious significance to Ingalls, Respondent was motivated not by any unlawful animus

toward Broadus but by a desire to maintain good relations with Ingalls by emulating its own disciplinary policies.

In reaching this conclusion, I also note significant differences between Broadus' discharge and the layoff of Sellers a week earlier. First, Broadus was not one of the picketers against whom Stinson had expressed specific animus. Second, unlike Sellers, there was no element of deceit on Respondent's part in masking the reason for discharging Broadus, thereby eliminating the inference that his discharge was for an unlawful motive. Third, also unlike Sellers, Stinson encouraged Broadus not to run to the Union about his discharge and that he (Stinson) would recall Broadus in 30 days. This evidence is but one more example of the fact that Respondent, and particularly Stinson, bore unswerving and unrelenting animosity toward the picketers for causing a work stoppage on May 27 but otherwise expressed little hostility against other employees.

F. *The Failure To Reinstate Tardy to His Former Position*

When Tardy was reinstated on September 8, he was assigned to the position of a laborer. While Respondent argues that Tardy was a laborer prior to the strike, I have rejected that argument for reasons detailed above. Dragunas himself concedes, in agreement with Tardy, that at the time of the strike Tardy was utilized to lay tile, work which Respondent classifies as a tile mechanic. Respondent does not deny that such work was available when it reinstated Tardy.

Respondent also introduced much testimony to the effect that it was less than satisfied with Tardy's work in laying tile prior to the strike. Dragunas, however, effectively concedes that Tardy was never removed from such work or reprimanded for its quality prior to the strike. Respondent is simply not at liberty to reassess the quality of an employee's work because that employee has engaged in protected strike activity and therefore recall the employee to a lesser position when his former work is still available. To do so necessarily implies a discriminatory or retaliatory act for the employee having engaged in protected activity. Consequently, I find that by reinstating Tardy as a laborer rather than to his former work in laying tile, Respondent discriminated against Tardy in violation of Section 8(a)(1) and (3) of the Act.

G. *Respondent's Failure To Recall Picketers*

The General Counsel alleges, and Respondent denies, that even if the picketers were not discharged nor unlawfully replaced, they were nevertheless discriminated against individually by Respondent failing to recall them at various times when positions became available. For the reasons indicated, I find merit to the General Counsel's position in the following respects.

On June 6, Broadus and Nelson, both tile mechanics, were terminated as a result of having their security passes taken from them by Ingalls' security personnel. Their termination created vacancies for two tile mechanics. Respondent, however, did not offer either of these positions to Tardy, the only picketer with experience laying tile.

After Broadus and Nelson were terminated, two other employees, laborer Mike Everhart and replacement Tony Pierce, were also terminated as a result of having their security badges taken from them by Ingalls' security personnel. Their terminations created two additional vacancies. Pierce had been the designated replacement for Sellers and so it can be said with certainty that Sellers should have been offered that position. Among the picketers there were two laborers, George Lee and Edgar Graves. The evidence reflects that on June 15, Lee would have been reinstated but for Steigerwald's unlawful and discriminatory decision not to hire anyone because of the pending unfair labor practice charges. Therefore, it can also be determined that the position made available by Everhart's termination should have been offered to Graves, the only other laborer among the picketers. By failing to offer these positions to Tardy, Sellers, and Graves, Respondent discriminated against them in violation of Section 8(a)(1) and (3) of the Act.[12] *Decker Foundry Company Inc.*, 237 NLRB 636 (1978).

With respect to the subcontracting of work in June 1980, the evidence shows that Respondent first considered that possibility as early as March 1979. In mid-May 1980, Respondent met with Wilks and discussed the possibility of his performing the work. Since both of these events predated the strike or any other significant union activity, I would reject any argument of counsel for the General Counsel that Respondent precipitously conceived of a plan to subcontract work in order to displace strikers. However, that does not answer the question whether Respondent in fact carried through with using a subcontractor to perform the work in order to avoid having to recall strikers.

Respondent did not give Wilks a verbal commitment to perform the work until June 6, 10 days after the strike. Respondent did not even request the necessary permission from Ingalls to subcontract the work until June 6, and permission was not granted until June 17. Two days prior, on June 15, Stinson had offered reinstatement to picketer George Lee. On June 16, however, he had to withdraw that offer on instructions from Steigerwald not to hire anyone because of the pending unfair labor practice charges. It is clearly unlawful for an employer to discriminate against employees because a charge has been filed on their behalf with the Board.

The agreement between Respondent and Wilks to perform the work was never reduced to writing, something which Respondent itself admits was very unusual. It was purely an oral agreement—terminable at will—as shown by Respondent's later action in actually terminating the agreement and by Steigerwald's July 16 letter to Ingalls in which he states: "Several days before starting the job, I discussed the possibility of not using Mr. Wilks, but rather use our own men."

[12] Respondent's rehiring of Broadus, Nelson, Everhart, and Pierce on July 22 is part and parcel of Respondent failing to offer those vacant positions to picketers and therefore does not call for a separate finding of Respondent having violated the Act.

The question why Respondent carried through with using a subcontractor rather than its own employees is answered unequivocally in the next line of Steigerwald's July 16 letter: "This would have led to several problems, the *greatest* of which was *our union negotiations*." This statement, which I have heretofore found to be a clear and unmistakable reference to the Union's organizational campaign which is the subject of this case, evidences without room for any doubt that Respondent carried through with using a subcontractor rather than its own employees primarily in order to avoid having to recall picketers and thereby prevent the Union from again obtaining the support of a majority of its employees. It is not surprising, therefore, that when Respondent has no choice but to take over the work of Wilks on July 2 and again on July 9, Respondent still chose to perform the work with employees then on the payroll, even though they had to be diverted from other work, rather than recall the picketers. Based on the above, I find that commencing on July 1, 1980, and continuing thereafter Respondent utilized a subcontractor to perform certain work in order to avoid having to recall picketers. Further, on July 2 and July 9, 1980, Respondent failed to recall picketers to available work because they had engaged in protected strike activity on May 27.[13] By each of these acts, Respondent discriminated against employees in violation of Section 8(a)(1) and (3) of the Act.

H. *The Request for a Bargaining Order*

By May 20, no less than 16 of 23 employees in the unit which the parties stipulate would be appropriate had signed authorization cards designating the Union to be their agent for purposes of collective bargaining.

On May 21 and by letter dated May 28, Respondent declined the Union's requests for bargaining.

Commencing on May 27, and continuing steadily for a 4-month period through September, Respondent engaged in numerous unfair labor practices. The evidence is far too strong to leave room for any claim that these were isolated or unrelated acts. Rather, analysis of these acts leads me to an inescapable conclusion that they reflect a pattern of predesigned conduct, which includes the following: (1) on May 27, threats to fire the picketers; (2) on May 28, statements that picketers had been fired; (3) on May 27 and/or 28, the discharge or unlawful replacement of picketers; (4) on June 15, the decision not to hire anyone because of pending unfair labor practice charges; (5) on June 16, the withdrawal of an offer of reinstatement to Lee; (6) on July 1, the use of a subcontractor rather than Respondent's own employees in order to avoid recalling picketers; (7) on July 2 and 9 the failure to recall picketers for available work even when it became necessary to take over the work of the subcontractor; (8) on August 1 through 14, the imposition of an unlawful no-solicitation rule; (9) on August 15, the discriminatory layoff of Sellers; (10) on September 8, recalling a picketer to a lesser position than he occupied prior to the strike even though the latter work was available; (11) in late September, threatening employees that because of their union activity they might be fired again. This pattern of predesigned conduct was embarked upon by Respondent for the sole purpose of eradicating support for the Union among its employees. The picketers and other employees alike are unlikely to forget Respondent's conduct. In a small unit, the impact of such conduct, particularly discharges, has a far more pervasive effect than in a large unit and practically makes a fair election impossible. *Pay 'n Save Corporation*, 247 NLRB 1346 (1980). In a case such as this, the unfair labor practices may not be remedied merely by use of the traditional remedies usually granted by the Board. I find that a bargaining order is fully warranted in this case effective from May 27, 1980, when Respondent commenced its pattern of unfair labor practices designed to destroy the Union's support among its employees. I also find, as a result of the pervasive nature of Respondent's unfair labor practices, continuing over such an extended period, that a broad order is warranted prohibiting Respondent from interfering with employees' Section 7 rights "in any other manner." *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in sections III and IV, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Respondent, J. E. Steigerwald Co., Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening employees that people wearing picket signs would be fired; telling employees that people on strike (i.e. picketers) had been fired; telling employees that an offer of reinstatement was being withdrawn because of the pending unfair labor practice charges; telling employees that because of their protected union activities

[13] It becomes unnecessary to consider whether Respondent further violated the Act by failing to recall picketers on August 22, when a vacancy was created by Keith Broadus' discharge, or on August 26, September 15, October 16 and 17, November 4 and 17, and December 15, when Respondent hired new employees rather than recall picketers. It is apparent that by July 2 and 9, there was sufficient work available to require Respondent to have recalled all of the picketers. I reject Respondent's claim that it was obligated to offer reinstatement to picketers only if work became available which was the exact nature they had performed prior to the strike. Respondent was obligated to offer them work in *any* job which they were capable of performing. *Decker Foundry Company, supra* at 640.

they might be fired again; telling employees they were not permitted to talk about the Union on the job, Respondent has restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By discharging and/or unlawfully replacing John Clark, Noble Mann, Joseph Cooper, Edward Graves, Alexis Joseph Tardy, George Lee, and Kenneth Sellers; by refusing to reinstate employees and withdrawing an offer of reinstatement from George Lee because of pending unfair labor practice charges; by using a subcontractor to perform work in order to avoid having to recall picketers; by failing to recall picketers to available positions; by laying off Kenneth Sellers following his reinstatement; and by reinstating Alexis Joseph Tardy to a lesser position than that which he occupied prior to the strike, all because of their protected strike activity and support for the Union, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) of the Act.

5. All production and maintenance employees employed by Respondent at its Pascagoula, Mississippi, operations, including laborers, trowel mechanics, tile mechanics, terrazzo grinders; excluding all office clerical employees, professional employees, guards, watchmen and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

6. Since May 20, 1980, the Union has been, and is, the exclusive collective-bargaining representative of the employees in the aforesaid appropriate unit within the meaning of Section 9(a) of the Act.

7. By failing and refusing to bargain in good faith with the Union as collective-bargaining representative of its employees in the unit described above, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

8. Respondent did not violate the Act by its termination of Keith Broadus or Dwight Nelson on June 6 or by its discharge of Keith Broadus on August 22, 1980.

9. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[14]

The Respondent, J. E. Steigerwald Co., Inc., Pascagoula, Mississippi, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with being fired for picketing; telling employees that people on strike (i.e., picketers) have been fired; telling employees that an offer of reinstatement is being withdrawn because of pending unfair labor practice charges; telling employees that because of their protected union activities they might be fired again; telling employees they are not permitted to talk about the Union on the job.

(b) Discharging or unlawfully replacing employees; refusing to reinstate employees and withdrawing offers of reinstatement from employees because of pending unfair labor practice charges; using subcontractors to perform work in order to avoid having to recall picketers; failing to recall picketers to available positions; laying off employees; reinstating employees to lesser positions than they occupied prior to a strike, because employees engage in protected strike activity and support a union.

(c) Refusing to bargain collectively with International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive representative of its employees in the unit described above.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act:

(a) Offer John Clark, Noble Mann, Joseph Cooper, Edward Graves, Alexis Joseph Tardy, George Lee, and Kenneth Sellers immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges.

(b) Make John Clark, Noble Mann, Joseph Cooper, Edward Graves, Alexis Joseph Tardy, George Lee, and Kenneth Sellers whole for any loss of earnings or benefits they may have suffered by reason of the discrimination against them by payment to them of a sum of money equal to the amount they normally would have earned from the dates of said discrimination to the date of Respondent's offer of reinstatement, less net interim earnings, with backpay to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977); see, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(c) Upon request, bargain collectively with International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the appropriate unit described above concerning rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an agreement is reached, embody it in a signed contract.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

[14] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.

(e) Post at its facility located in Pascagoula, Mississippi, copies of the attached notice marked "Appendix."[15] Copies of said notice, on forms provided by the Regional Director for Region 15, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[15] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Act, as amended, gives all employees the following rights:

To organize themselves
To form, join, or support unions
To bargain as a group through a representative they choose
To act together for collective bargaining or other mutual aid or protection
To refrain from any or all such activities except to the extent that the employees' bargaining representative and employer have a collective-bargaining agreement which imposes a lawful requirement that employees become union members.

WE WILL NOT threaten employees with being fired for picketing; tell employees that people on strike (i.e., picketers) have been fired; nor tell employees that because of their protected union activities they might be fired again.

WE WILL NOT tell employees that an offer of reinstatement is being withdrawn because of pending unfair labor practice charges.

WE WILL NOT tell employees they are not permitted to talk about the Union on the job.

WE WILL NOT discharge or unlawfully replace employees, nor lay off employees, because they engage in protected strike activity and support a union.

WE WILL NOT fail to recall picketers to available positions; refuse to reinstate employees or withdraw offers of reinstatement from employees because of pending unfair labor practice charges; use subcontractors to perform work in order to avoid having to recall picketers; nor reinstate employees to lesser positions than they occupied prior to a strike, because employees engage in protected strike activity and support a union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the Act.

WE WILL offer immediate and full reinstatement to employees John Clark, Noble Mann, Joseph Cooper, Edward Graves, Alexis Joseph Tardy, George Lee, and Kenneth Sellers to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered as a result of our discrimination against them, with interest.

WE WILL, upon request, bargain with International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive representative of all our employees in the appropriate bargaining unit described above with respect to rates of pay, wages, hours of employment, and and other terms and conditions of employment, and, if an agreement is reached, embody it in a signed contract.

J. E. STEIGERWALD CO., INC.